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SUBJECT: THAI TELECOM CONCESSIONS ON THE PRECIPICE

REF: BANGKOK 1203

¶1. Summary: Thailand's Council of State is reviewing amendments made over the years to the private telecom concessions and is likely to conclude that the amendments were granted illegally. The Ministry of Information Technology and Communication (MITC) could use the Council's finding to move ahead with cancelling all concessions and effectively nationalize the sector, but will more likely use its strong position to renegotiate the contracts. MITC and the coup-installed government in general claim to be using their limited time in office to strip away the corruption of the Thaksin years and level the playing field for the years ahead. They would also like to see state-owned telcos strengthened. Inflicting pain on Shin Corp, formerly owned by Thaksin, would be an added bonus, exacting a measure of revenge for the alleged corruption the company was involved in during the Thaksin years. The RTG's proposals may be injurious to the investment environment, but serious action does need to take place in Thailand on the status of the telecom sector. However, in the end this government may not have the time to push through radical changes. End Summary.

¶2. Thailand's private mobile and fixed telecommunications providers have long operated under a Build-Transfer-Operate system, wherein the private telcos build the infrastructure, transfer ownership to state-owned telcos TOT or CAT, then operate their business under a concession of limited duration. The original concessions were scheduled to end between 2006 and 2013 for the three largest private providers, but over the years they negotiated amendments that extended those concession lives to up to 2018 and reduced regulatory fees.

¶3. The MICT's own recent review of the concessions concluded that the RTG Cabinet did not approve the amendments as required by law and they are therefore invalid. They suspect as well that the amendments were questionably obtained and may have involved corruption on the part of senior executives from TOT and CAT. The Council of State, the RTG's legal agency, is reviewing the legality of the amendments and is expected to issue a recommendation for remedy as well. Although the Council's opinion is non-binding, it would guide the government in its attempts to seek redress through the judicial system.

Is this the end for concessions?

¶4. In a worst-case scenario for the private telcos, all non-Cabinet approved amendments would be cancelled and concessions would revert to their originally approved timeframes. For market leader AIS (owned by Shin Corp, itself owned by Singapore's Temasek), their concession would be cut from 2015 to 2010, and be required to share 30 percent of their revenues with TOT vice the current arrangement

of 20 percent plus a portion of the VAT tax. Analysts doubt AIS could recoup their investment under these limitations. Norwegian-owned DTAC would be hit even harder: their original concession ended in 2006, and they essentially would be forced to close their doors. In addition, a reduction in revenue sharing won in the mid-1990s would be eliminated, and DTAC could be liable for underpayment of revenue sharing over the past ten years. TRUE Move, the third largest provider, operates under an amendment to DTAC's concession, and would have to close shop as well. If courts rule the telcos underpaid revenue sharing payments, they could also impose substantial fines.

15. Although the worst-case scenario is a possibility, analysts believe that outright cancellation would be tantamount to nationalization and have a disastrous effect on the investment climate. Rather, they believe the RTG would instead use its strong position to renegotiate the concession contracts. One analyst predicts the RTG would seek to level the playing field, and set the same concession termination dates and revenue sharing arrangements for each telco rather than the hodgepodge of individual agreements that exists today. The RTG could choose to set termination dates at 2013, consistent with that of TRUE Move. This would trim AIS's concession by two years and DTAC's by five. Revenue sharing would be set at 25 percent, equal to DTAC and TRUE's current arrangement, but a tad higher than what AIS currently pays. The telcos may also be liable for fines for underpaying revenue sharing.

16. TOT Chairman General Saprang Kalayanamitr recently proposed that all telecommunications assets be brought together in a "telecom pool". After pulling back the private concessions, TOT would become a national telecommunications company, managing the nation's assets and leasing use of the networks to private companies. Critics question the TOT's competency in managing the entire network, and worry that consolidation will bring a return to government monopoly

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of the industry. TOT would maintain sole control over expansion of the network and leasing rates. MICT Minister Sittachai later took a step back on the telecom pool idea, saying that only the two state-owned providers would consolidate network management. The telecom pool idea appears to be losing strength, but the idea still has support within the coup leadership.

17. The private telcos are intimidated by the MICT Minister's and TOT Chairman's comments regarding withdrawing the concessions, but do not believe the worst will pass. And, as one operator told Econoff, "If they do, we'll see them in court." From their perspective, the responsibility to obtain Cabinet permission for the amendments belonged to TOT and CAT, and if a court rules them invalid the private companies will sue for damages. However, the RTG suspects corruption played a hand in the approval of the amendments. The telcos say they received the concession extensions in a tradeoff for increased competition in the sector, but other telecom analysts say the amendments were so one-sidedly in favor of the telcos, particularly for Shin-owned AIS, that corruption almost certainly was involved. Though difficult to prove, if the amendments were obtained illegally the concessionaires will have no legal recourse, even if the concessions are withdrawn completely.

Still gunning for Thaksin?

18. RTG officials say, and most analysts agree, that the government's motivation in investigating the concessions is to clean house in the telecom sector and eliminate the corruption and shady deals that took place both before and during the previous administration. MICT Minister Sittichai has said he wants to rebuild the telecom industry on a foundation of "fairness, justice, legitimacy, and transparency." Disturbed by the scope of the revenue lost to the government from the amendments, he is determined to guide the sector with a firmer hand. Punishing the telcos for their illegal behavior not only levels the playing field, but sets a precedent for future corruption, sending the message that corrupt activities will be discovered, perhaps not soon but eventually, and will be severely penalized.

¶9. Nevertheless, it is hardly coincidental to the investigation that the former owner of the largest telecom provider was the now-deposed PM Thaksin. Coup leaders justified the coup by claiming a culture of corruption surrounding Thaksin and have launched numerous investigations (mostly fruitless so far) to prove it so. The RTG's vendetta against Thaksin has hit hardest on his former company, Shin Corporation, and its current Singaporean owners Temasek. As a holding company, Shin holds mobile provider AIS, satellite company Shinsat, independent television station ITV, and discount airline Thai Air Asia. Since Temasek made its bid for Shin in January 2006, the stock price has dived by more than half.

Shin takes it on the chin

¶10. In December 2006, in a case similar to the current telecom investigation, a court ruled that the Cabinet had not approved an amendment to ITV's contract and was therefore invalid (reftel). The government withdrew ITV's operating concession after it was unable to pay 100 billion baht in fines (approx. USD 2.8 billion), effectively eliminating the last non-state owned television station. Although ITV was a minor possession of Shin Corp and had little effect on its bottom line, the case set a disturbing precedent for the telecom concessions and the investment environment at large.

¶11. In February, coup leader Sonthi Boonyaratkalin called for the return of ShinSat's satellite assets, terming them "Thai national assets", adding that as a soldier he would "not tolerate a loss of territory, not even a square inch. It is the same with natural resources." Sonthi also alleged that the Singaporean owners were secretly bugging Thai telephones via the satellites. MICT officials

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examined ways to take possession of ShinSat and though ruled out an outright nationalization of the assets, considered buying out Temasek's stake in the company. The MICT also reviewed Shin Satellite's concession, and while it found several discrepancies, decided they were of a limited technical nature and took no action. As quickly as it began, the RTG's quest for the return of the satellites ended, as PM Surayud coolly announced that the government would not be interfering in the matter and would leave it to the private sector. Analysts surmised that the RTG leadership realized either that its relations with Singapore were being unnecessarily damaged, or that perhaps taking full ownership of the debt-laden ShinSat was not such a good acquisition after all.

NTC on the ropes

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¶12. Thailand's independent regulator, the National Telecommunications Commission, confided their concerns in a meeting with the European Commission, fearing that cancellation of the concessions will preclude a power shift away from NTC and back to the state. NTC accuses the state-owned telcos of routinely ignoring NTC regulations, a situation that would only worsen if telecom assets were concentrated under state control. The NTC believes that if its regulatory powers shift to the state, Thailand will be out of compliance with its WTO commitments to maintain an independent regulator and separate regulatory and operational functions. The NTC pleaded with the EU to inform RTG officials of the potential impact concession cancellation could have on the investment climate.

¶13. The National Legislative Assembly (NLA) has held two public hearings on potential amendments to the Telecom Act and the Frequencies Act. The key amendment would consolidate the NTC with the yet-to-be-formed National Broadcasting Commission (NBC). The years-long delay in creating the NBC has delayed the issuance of licenses for 3G services as the technology crosses both areas. Telecom providers are enthusiastic about the proposed amendment, as is the NTC, but media groups oppose the proposition on the grounds that a combined NTC/NBC would give broadcasting issues short shrift.

¶14. Comment: The telecom sector is in a highly volatile state and the high degree of uncertainty is affecting the investment climate beyond just this sector. The constant pronouncements of plans for radical changes in telecom by a diverse range of actors in the government is raising blood pressures among telecom providers. However, despite the volatility of the RTG's statements, it should be noted that they have yet to follow through on the more radical ideas. Time is also an issue. The current government plans to hold elections by end of year and may find it difficult to complete what would be drawn out negotiations with private telecom providers over concessions, not to mention possible court actions. Current ideas for telecom changes may have a negative impact on the sector, but the silver lining is that serious discussions are now taking place on the role of the regulators, the state-owned agencies and their relationship with the private telcos. End comment.
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